

JAN 20 2005

PTO/SB/61 (09-04)

Approved for use through 07/31/2006. OMB 0851-0031  
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

<b>PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED UNAVOIDABLY UNDER 37 CFR 1.137(a) OR UNINTENTIONALLY UNDER 37 CFR 1.137(b)</b>		Docket Number (Optional) <b>24461-003 CPA</b>
First Named Inventor: <b>Gerhard Weiglhofer</b> Application Number: <b>09/199,888</b> Filed: <b>Nov 24, 1998</b> Title: <b>3D REAL-TIME SENSOR SYSTEM, METHOD AND COMPUTER PROGRAM THEREFOR</b>		Art Unit: <b>2671</b> Examiner: <b>Phu K. Nguyen</b>
<p style="text-align: center;"><b>REQUEST FOR RECONSIDERATION OF DISMISSAL OF PETITION FOR REVIVAL</b></p> <p>Attention: Office of Petitions Mail Stop Petition Commissioner for Patents P.O. Box 1450 Alexandria, VA 22313-1450</p> <p style="text-align: center;">NOTE: If information or assistance is needed in completing this form, please contact Petitions Information at (703) 305-9282.</p> <p>The above-identified application became abandoned for failure to file a timely and proper reply to a notice or action by the United States Patent and Trademark Office. The date of abandonment is the day after the expiration date of the period set for reply in the Office notice or action plus any extensions of time actually obtained.</p> <p><b>APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION.</b>  NOTE: A grantable petition requires the following items:  (1) Petition fee.  (2) Reply and/or issue fee.  (3) Terminal disclaimer with disclaimer fee-required for all utility and plant applications filed before June 8, 1995, and for all design applications; and  (4) Adequate showing of the cause of unavoidable delay.</p> <p>1. Petition fee  <input checked="" type="checkbox"/> Small entity - fee \$ <u>250.</u> (37 CFR 1.17(l)). Applicant claims small entity status.  See 37 CFR 1.27. <b>(\$55 paid previously)</b>  <input type="checkbox"/> Other than small entity - fee \$ _____ (37 CFR 1.17(l)).</p> <p>2. Reply and/or fee  A The reply and/or fee to the above-noted Office action in the form of  <u>DISMISSAL OF PETITION DTD 11-22-04</u> (Identify the type of reply):  <input type="checkbox"/> has been filed previously on _____  <input checked="" type="checkbox"/> is enclosed herewith.  B The issue fee of \$ <u>100.00</u>  <input type="checkbox"/> has been filed previously on _____  <input checked="" type="checkbox"/> is enclosed herewith, <b>SEE ATTACHED PTO 85(b).</b></p>		

(Page 1 of 3)

This collection of information is required by 37 CFR 1.137(e). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 8 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-8188 and select option 2.

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**PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED  
UNAVOIDABLY UNDER 37 CFR 1.137(a)**

## 3. Terminal disclaimer with disclaimer fee

- ☒ Since this utility/plant application was filed on or after June 8, 1995, no terminal disclaimer is required.
- ☐ A terminal disclaimer (and disclaimer fee (37 CFR 1.20(d)) of \$ \_\_\_\_\_ for a small entity or \$ \_\_\_\_\_ for other than a small entity) disclaiming the required period of time is enclosed herewith (see PTO/SB/63).

## 4. An adequate showing of the cause of the delay, and that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition under 37 CFR 1.137(a) was unavoidable, is enclosed.

**WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.**

Jacques M. Dulin  
Signature

Jan 19, 2005  
Date

JACQUES M. DULIN, ESQ  
Typed or printed name

24,067  
Registration Number, if applicable

INNOVATION LAW GROUP, Ltd., NetPort Center, Suite  
Address

360-681-7305  
Telephone Number

201, SEQUIM WA 98382-3338  
Address

Enclosure ☒ Fee Payment ISSUE FEE FORM PTO 856

☐ Reply

☐ Terminal Disclaimer Form

☒ Additional sheets containing statements establishing unavoidable delay

☒ CHARGE ALL FEES TO DEPOSIT ACCOUNT 04-1699

**CERTIFICATE OF MAILING OR TRANSMISSION (37 CFR 1.8(a))**

I hereby certify that this correspondence is being:

☐ deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

☒ transmitted by facsimile on the date shown below to the United States Patent and Trademark Office at (703) 872-9306.

1-20-2005  
Date

Jana L. Dulin  
Signature

JANA L. DULIN  
Typed or printed name of person signing certificate

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UNAVOIDABLY UNDER 37 CFR 1.137(a)**

NOTE: The following showing of the cause of unavoidable delay must be signed by all applicants or by any other party who is presenting statements concerning the cause of delay.

Jacques M. Dulin, Esq.

Signature

1-19-05

Date

JACQUES M. DULIN

Typed or printed name

24067

Registration Number, if applicable

(In the space provided below, please explain in detail the reasons for the delay in filing a proper reply.)

SEE ATTACHED pp 4-7 and  
PTOL 856

(Please attach additional sheets if additional space is needed.)

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE OFFICE OF PETITIONS

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JAN 20 2005

First Named Inventor: Weiglhofer, Gerhard	)	Application No. 09/199,888
	)	
Title: 3 D Stereo Real-Time Sensor System,	)	Filing Date: Nov. 24, 1998
Method and Computer Program	)	(Parent)
Therefor	)	CPA: Dec. 18, 2000
	)	
Attorney Docket: 24461-003CPA	)	Examiner: Phu K. Nguyen
	)	Phone: (703) 305-9796
Attorney Advisor: Derek L. Woods, Esq.	)	Group Art Unit: 2671
Telephone: 571 - 272 - 3232	)	

REQUEST FOR RECONSIDERATION OF  
PETITION FOR REVIVAL UNDER 37 CFR 1.137 (a)  
In The Alternative  
REQUEST FOR RECONSIDERATION OF  
PETITION FOR REVIVAL UNDER 37 CFR 1.137 (b)  
(Attachment to Page 3)

Attention: Petitions Attorney Advisor Derek L. Woods, Esq.

Sir:

This is a Request for Reconsideration of the Dismissal of the Petition for Revival of this Application under 37 CFR 1.137(a) filed August 10, 2004 and Dismissed on Nov 22, 2004.

In addition, and in the alternative, this is a Request for Reconsideration of the Dismissal of the Petition for Revival of this Application under 37 CFR 1.137(b) filed Aug 10, 2004, also Dismissed on Nov. 22, 2004.

This Request for Reconsideration is currently due on Saturday January 22, 2005 (Monday January 24, 2005).

Please charge any fees (or any increase in fees not heretofor paid) for this Request for Reconsideration under either 137(a) or 137(b) and for the Issue Fee to the Deposit Account 04-1699 of undersigned counsel. Applicants are a Small Entity. The Statement of Record in the CPA and in the parent application, so the IF should be \$700 and advance copies \$30; there does not appear to be any publication fee due. Please identify any transactions related thereto with counsel's docket number 24461-003-CPA.

In respect of the payment of the IF, a hand-filled NOA form PTOL 85b is attached. A hand-filled copy of one from another case has had to be used because no PTOL 85b was forwarded in the fax of Dec 1, 2004 from the Office of Petitions.

Please also note that Formal Drawings have been on file since March 16, 2001. Since the second, corrected Notice of Allowance due date for the payment of the IF was May 15, 2001, the Formal Drawings were timely filed. Please confirm.

The comment on page 1 of the Dismissal in respect to an oath or declaration "executed by the non-signing inventor" is not understood, as a Response to Missing Parts was filed on Feb 2, 1999 and included declarations executed by all the inventors.

As a result of the prior-filed petition of Aug 10, 2004, the Dismissal on Nov 22, 2004, the telephone discussion with Petitions Advisor Derek Woods, Esq. in response thereto and the 4-page fax to undersigned counsel on Dec 1, 2004 from Mr. Woods (which provided counsel for the first time the second Notice of Allowance dated Feb 14, 2001, the corrected one dated Feb 15, 2001, and the 1-page Supplemental Notice of Allowability), it is now clear that in response to the CPA filed on Dec 18, 2000 this case was re-allowed by Examiner Nguyen on Feb 14 and 15, 2001.

Both those notices of Allowance/Allowability were sent to the wrong address. Neither was ever sent to undersigned counsel by either the USPTO or counsel's former law firm. The USPTO erred in mis-addressing both the February 2001 Notices of Allowance, in spite of the clear instructions in the CPA filing papers of Dec 18, 2000. That CPA filing was attached to the original petition filed in this case on Aug 10, 2004, and is hereby incorporated by reference. Please see page 3 thereof which clearly stated counsel's then-address in 2000:

**"Please address all future written and telephone communication to:**

**Jacques M. Dulin, Esq., Reg. No. 24,067**  
Innovation Law Group, Ltd.  
851 Fremont Ave., Suite 101  
Los Altos, CA 94024  
Phone: (650) 947-7287  
Fax: (650) 947-7280"

That constituted a new application filing, and the instructions should have been followed by the USPTO. It obviously did not.

That CPA filing address of counsel stayed the same from May 1, 2000 through June 30, 2002, so that at all times relevant to this matter, the USPTO had counsel's proper address on file. The check in payment of the CPA filing fee had the correct address. In addition, undersigned counsel's then correct address was on file in the USPTO Roster of Attorneys. In addition, counsel's then-correct address was included in the IDS and the Submission of Formal Drawings, all of which took place no later than March 16, 2001. (The current address is on file.)

It is important to note that in the telephone conference with Examiner Nguyen on Aug 6, 2004 regarding the status of the case, he failed to inform undersigned counsel that he had allowed the case on February 14 and 15, 2001. Had counsel been informed of that fact then, the originally filed petition on Aug 10, 2004 would have addressed that issue, and insured the IF was paid then.

Further, there should have been no action by the USPTO to declare this case abandoned because of the instructions given to the USPTO upon the filing of the CPA application on Dec 18, 2000. **In those filing papers, undersigned counsel gave continuing blanket instructions to pay the Issue Fee, stating in unambiguous terms on page 4 of the CPA filing papers (emphasis supplied):**

**"[X] Any extension of time necessary to insure copendency of this CPA case with its parent, and the filing fee and any surcharge under 37 CFR 1.16, any patent application processing fees under 37 CFR 1.17 and patent issue fees under 37 CFR 1.18 are intended to be paid by our firm as they arise. As no abandonment is intended by any inadvertent nonpayment of fees, the Commissioner is hereby**

**authorized to charge payment of such fees as from time to time come due, if not paid prior to due date, to our Deposit Account No. 04-1699.**

Thus, the USPTO was in fact authorized by counsel of record to pay the Issue Fee for the February 15, 2001 Notice of Allowance to the correct Deposit Account # 04-1699.

Further, no Notice of Abandonment dated "April 29, 2004" was ever received by undersigned counsel. The only Notice of Abandonment dated June 18, 2001 was received by belated forwarding from counsel's former firm on March 9, 2002, a 9-month delay, and it quite correctly was assumed to relate to the original Notice of Allowance in 2000.

When received on March 9, 2002, the June 18, 2001 Notice of Abandonment was misunderstood as being irrelevant, being superceded by the CPA filing of Dec 18, 2000, and the express abandonment of the parent case at the time of filing the CPA. In this regard, the notation placed on the Notice by Heller stated "Previously Docketed" with the handwritten comment by it "as abandoned on 6/5/00 and to be transferred". The date of "6/5/00" was crossed out. That lent credence in our office to the abandonment of the parent in favor of the subsequent CPA filing.

Further, the June 18, 2001 Notice of Abandonment entirely fails to identify the mailing date of the Notice of Allowance. Had a date been inserted, e.g., "Feb 15, 2001" in that line, it would have been clear to counsel that the Notice of Abandonment did not relate to the original Notice of Allowance dated Oct 2, 2000. Applicant has suggested twice to the Office of Petitions that the USPTO change that form to insert the date of the Notice of Allowance, the issue fee of which is alleged to have not been paid.

The Dismissal makes much of the time period of 3 years before the discovery of the abandonment. **However, this period is entirely reasonable as the application relates to and claims computer programs. The 4+ year backlog of Group 2600 in computer cases is well-known.** Counsel assumed that the new art cited, some 7 references of which 5 were foreign references, generated a completely new examination of the case which would take substantial time.

While counsel is pleased that the Examiner apparently reviewed the CPA promptly, I am still amazed that it proceeded through the USPTO intake process and was examined and allowed in less than 2 months. (To this day, we have not received a copy of the Examiner's PTO 892 or the signed-off 1449 confirming the Examiner's review of the references, although the Notice of Allowability faxed to counsel on Dec 1, 2004 does refer to the PTO 1449 paper #5 as being attached, and presumably signed-off.)

At the time of filing the CPA, undersigned counsel advised Examiner Nguyen by telephone call of the filing of the CPA for the purpose of citing the art that had been turned up in the European case search. The Examiner had counsel's then phone number. Clearly it was different than before. It was understood that he would call to advise when he reached the case so we could determine if he had any questions about the references. We received no call.

In 2001 counsel was diligent on the case following the CPA filing, attending to the filing of the Formal Drawings and refiling the IDS with the new references, both papers including the correct new address.

**Applicants are entitled to rely on the USPTO to carry out the instructions upon filing a case as to proper addresses and Deposit Account numbers. That reliance is entirely reasonable, as they paid a new filing fee. In this case such reliance was apparently misplaced; no endorsement of counsel's correct address was entered in**

the appropriate electronic records of the USPTO. But that mistake, which we presume led to the mis-addressing of the Notices of Allowance is not of Applicant's doing, so that revival of this case under 37 CFR 1.137(a) is proper.

Please note both the Feb 14 and the Feb 15, 2001 Notices of Allowance are identical, although the one dated Feb 15 states it is "Corrected". Perhaps the PTO meant to correct the address, but did not. Both have the same, incorrect address of counsel, contrary to the clear instructions (quoted above) to send all communications to the new address, then in Los Altos, CA.

Applicants believe that no fee is due as the abandonment is due to PTO error in sending the Feb 2001 Notice of Allowance to the wrong address and then compounding the matter by not paying the Issue Fee out of the correct Deposit Account 04-1699, both in spite of Applicants' PTO filing on Dec 18, 2000 clearly stating the correct address and Deposit Account # with instructions to pay.

In addition, Applicants apply for an adjustment to the patent term of an additional period of  $>3 \frac{1}{2}$  years under 35 USC 154(b) upon issuance of this application as a patent. If this Office does not handle that request, please forward a copy of this application to the correct department (which may be the Office of Patent Legal Administration. In the event a fee for this application under 154(b) is required, the Office is authorized to charge undersigned counsel's Deposit Account the appropriate amount. Please include Attorney Docket # 24461-003-CPA in connection with any transaction so that it can be tracked.

**PETITION IN THE ALTERNATIVE UNDER 37 CFR 1.137(b).**

In the event this case is ruled to not be unavoidably abandoned, please treat this as a Petition to Revive Unintentionally Abandoned Application under 1.137(b), and charge the fee due (small entity), less any amount for this petition if credit is allowed, to Deposit Account 04-1699. Please include the Attorney's Docket # 24461-003 in connection with the transaction so that it can be tracked by us.

Respectfully submitted,  
Gerhard Weiglhofer, et al

January 19, 2005

by Jacques M Dulin  
Jacques M. Dulin, Esq.  
Counsel for Applicants

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Encl: PTOL 85(b) Payment of Issue Fee